

1 THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 MIAMI DIVISION

4 CASE NO.: 23-cv-21377-DPG

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7 DONALD J. TRUMP, )  
8 Plaintiff, ) September 5, 2023  
9 v. )  
10 MICHAEL D. COHEN, ) Pages 1 - 34  
11 Defendant. )  
12 \_\_\_\_\_/

13  
14 DISCOVERY HEARING

15 BEFORE THE HONORABLE EDWIN G. TORRES  
16 UNITED STATES CHIEF MAGISTRATE JUDGE

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21 APPEARANCES:

22 Counsel on behalf of the Plaintiff:

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BY: ALEJANDRO BRITO, ESQ.

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2 APPEARANCES CONTINUED:

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9 (Appearing telephonically:)

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1 (Thereupon, the following proceeding was held:)

2 THE COURTROOM DEPUTY: Calling case of Donald J. Trump  
3 versus Michael D. Cohen; Case Number 23-cv-21377-Judge Gayles.

4 Counsel, please state your appearances for the record  
5 starting with the Plaintiff.

6 MR. BRITO: Good morning. Alejandro Brito on behalf  
7 of the Plaintiff.

8 MR. BRODSKY: Good morning, Your Honor.

9 Ben Brodsky and Max Eichenblatt on behalf of the  
10 Defendant and I believe my co-counsel is on the telephone as  
11 well.

12 MS. PERRY: Yes. Good morning, Your Honor.

13 E. Danya Perry for Mr. Cohen. Thank you for allowing  
14 us to appear telephonically.

15 THE COURT: Okay. Good morning, everybody.

16 This is a discovery hearing that was requested for  
17 this week. We moved it up to today and I received some  
18 material I believe yesterday, which I will pull up.

19 While I do that, let me turn to Mr. Brodsky. Tell me  
20 what, if any, progress has been made in the interim period and  
21 where you are.

22 MR. BRODSKY: So, Judge, we are here because the meet  
23 and conferral process has appeared to have broken down in this  
24 case.

25 And among the materials that we submitted are a number

1 of e-mails, text messages, and references to phone calls that  
2 we have made to Plaintiff's counsel in an attempt to get  
3 discovery compliance in this matter.

4 One of the primary issues that we were having was  
5 attempting to get confirmation from Mr. Trump's counsel that  
6 the September 6th deposition, which is a date he chose, was  
7 going to be proceeding.

8 And on Friday late afternoon we received --

9 THE COURT: Well, what made you think it was a  
10 problem, though? In other words, why was there any doubt?

11 MR. BRODSKY: Because we had not set the location of  
12 the deposition by virtue of Mr. Trump's insistence that he  
13 would not do it in my office.

14 And so we reached out seven or eight times to get  
15 confirmation that the deposition would either occur at  
16 Mar-a-Lago or at the West Palm Beach Courthouse at the Court's  
17 invitation. And despite those many, many, many requests  
18 Plaintiff's counsel was unable to respond with confirmation.

19 And so not knowing where the deposition was happening  
20 was a little --

21 THE COURT: What is on the notice?

22 MR. BRODSKY: My office.

23 THE COURT: Okay.

24 MR. BRODSKY: And so what happened is on Friday  
25 afternoon, Mr. Brito wrote an e-mail to say, well, Mr. Trump

1 can't make it because one of his lawyer's children is having a  
2 baby and he has a very busy schedule.

3                   We felt basically put into a corner because we are not  
4 going to have a hearing in front of Your Honor until Thursday  
5 and the deposition was Wednesday. What were we going to say?  
6 That, no, we are insisting on going forward on Wednesday with  
7 no deponent present?

8                   So we agreed and that may be, in a sense, water under  
9 the bridge, but it is of a type and it exemplifies the  
10 challenges that we face in this case in getting ordinary  
11 discovery cooperation from the Plaintiff. Who, apparently,  
12 does not believe that he is bound by the Federal Rules of Civil  
13 Procedure, notwithstanding, that he chose to bring the case in  
14 this court.

15                   So here we are having to require a court order to get  
16 deposition dates. We got a deposition date upon that court  
17 order and then got sandbagged a few days before saying we are  
18 not showing up after Mr. Trump had already not shown up to a  
19 properly noticed deposition earlier in the case.

20                   THE COURT: And when was that?

21                   MR. BRODSKY: That deposition was set in July and  
22 Mr. Trump simply did not show up.

23                   In previous discovery materials we filed a certificate  
24 of nonappearance for Mr. Trump's deposition. He didn't seek a  
25 protective order. He simply said I am not appearing. His

1 purported rationale was there was no confidentiality order in  
2 place and yet he sought no protection.

3                   So we are faced now with a Plaintiff who is, frankly,  
4 notorious for litigation abuse of not showing up twice for his  
5 deposition. And if that were only it, maybe we would not be  
6 here today, but there is a larger problem and that has to do  
7 with the documents for which we have been waiting several  
8 months now to receive.

9                   The Court ordered that the Plaintiff produce all  
10 documents by September 3rd. He did not. We received a partial  
11 production yesterday and there is an indication there may be  
12 more documents to come.

13                   And we were advised by Plaintiff's counsel that  
14 because the deposition has been moved, there is no urgency for  
15 the production of these documents and, of course, we feel the  
16 exact opposite.

17                   There is extreme urgency given that our client is  
18 faced with a lawsuit seeking five hundred million dollars in  
19 damages. And we need to get going in this case and have been  
20 undertaking very diligent efforts to do so, but have been  
21 stymied.

22                   We also have a reasonable basis --

23                   THE COURT: Under the circumstances, do you prefer to  
24 get the documents before the deposition or do you prefer to go  
25 forward with the deposition tomorrow?

1                   MR. BRODSKY: We are prepared to go forward tomorrow  
2 if the Court will so order it, if the Court is so inclined.

3                   THE COURT: Okay.

4                   MR. BRODSKY: I would say, Judge, as to the production  
5 itself, we have a reasonable basis to conclude that the search  
6 has not been done in accordance with the Federal Rules of Civil  
7 Procedure.

8                   Only 246 pages of documents have been produced. Half  
9 of which are duplicates. So a hundred or so pages of documents  
10 have been produced and facially there is something very wrong  
11 here.

12                  These are major events that are covered by the  
13 discovery request, for which we know by the public record that  
14 there were numerous consultants, and lawyers, and outside  
15 parties involved over which Mr. Trump has control within the  
16 definition of Rule 26.

17                  And yet, we have been left with this skimpy production  
18 with large gaps that are completely unexplained. And we have  
19 asked Mr. Brito, on more than one occasion, to explain to us  
20 how these documents are being gathered.

21                  What custodians are being searched. What search terms  
22 are being used. What the protocol is to separate out  
23 responsive and nonresponsive documents. What is being held  
24 back and why. And we were told Mr. Brito advises he would not  
25 tell us because that was work product, which is wrong. It is

1 not work product. It is part of Rule 26 for the party to  
2 explain to the other side what they have done to reasonably  
3 search for documents.

4 We have no privilege log. There has been an  
5 indication by Mr. Brito, on behalf of Mr. Trump, in his  
6 responses that documents are going to be withheld on the basis  
7 of privilege. We don't know when we are getting that privilege  
8 log. We don't know which documents are responsive to which  
9 requests.

10 Mr. Trump is treating this entire process like it is  
11 an afterthought and it is not. We have a due process right to  
12 this information and he is flouting the rules. We want an  
13 Order to Show Cause, Your Honor, for three things.

14 One, we want the Plaintiff to explain to the Court the  
15 exact process by which he gathered these documents. Whose  
16 e-mails were searched, by whom, with what criteria and what  
17 timeframe and who has gone through those documents.

18 We would like the Plaintiff to explain why his  
19 objection should not be overruled for failure to timely comply  
20 with these discovery obligations for document requests that  
21 have been pending for three months. And we would like an Order  
22 to Show Cause why the Plaintiff's privilege should not be  
23 deemed waived for failing to give us a privilege log.

24 And if the Court is so inclined, we would like the  
25 Court to order Mr. Trump to appear for his deposition tomorrow.

1 We will do it at Mar-a-Lago if that is where he wants it. We  
2 will do it anywhere so long as he shows up in person in South  
3 Florida and sits and gives testimony under oath.

4 So that is why we are here today and we appreciate  
5 your time.

6 THE COURT: Okay. Turning to counsel for the  
7 Plaintiff.

8 MR. BRITO: Good morning, Your Honor.

9 Your Honor, with respect to the deposition issue,  
10 going back to the July deposition, as Mr. Brodsky noted, they  
11 just unilaterally selected the deposition.

12 I had a very amicable conversation with Mr. Brodsky  
13 and I said we need to have this confidentiality issue addressed  
14 by the Magistrate before we proceed with the discovery that you  
15 are seeking in the form of a deposition.

16 That was not an issue. We went ahead and rescheduled  
17 the deposition. We came before the Court to deal with the  
18 confidentiality issue. In essence, I think it is a bit of  
19 piling on for purposes of trying to establish their record. I  
20 appreciate that, but that was never a contentious issue. It  
21 was really not a matter of dispute. We agreed to reschedule  
22 it.

23 We did select a date. Mr. Todd Blanche, who is one of  
24 the criminal attorneys who is representing Mr. Trump in the  
25 other matters, notified me that his daughter was due to give

1 birth at a different timing than what he had anticipated. He  
2 wanted to be present at the birth of his child.

3 I reached out to counsel. My understanding is that  
4 Miss Perry and Mr. Blanche have a history. They have worked  
5 together for some time. They know one another. I think Miss  
6 Perry knows Mr. Blanche's daughter who is having a child and  
7 she said fine.

8 It is late in the game and I acknowledge that, Judge,  
9 and I am sorry that we are here on that matter, but it was  
10 brought to my attention and I immediately communicated it to  
11 him.

12 THE COURT: The problem is why do I care? He can have  
13 it -- in other words, why is that an issue? He is not counsel  
14 of record in the case.

15 MR. BRITO: He is not, but by virtue, as I explained  
16 to the Court, there are going to be other lawyers that will  
17 need to be present for purposes of preserving privileges in the  
18 criminal matters that we understand that they are going to be  
19 asking about.

20 When we were last before you and Your Honor gave us  
21 some fairly clear guidelines as to what you anticipated would  
22 be fair examination and would not be fair examination, and not  
23 to spend three hours of time asking questions that would invoke  
24 the Fifth Amendment privilege, Miss Perry went out on her  
25 LinkedIn page and posted that she was free to ask whatever she

1 wanted to.

2                   So that gave us some concern. I had to bring in  
3 criminal counsel, as I told the Court I was going to have to do  
4 anyway, for purposes of making sure that those privileges were  
5 preserved.

6                   THE COURT: Then, in other words, like why does it  
7 have to be that one person? I am sure he has multiple lawyers.

8                   MR. BRITO: He does, but this is the head criminal  
9 defense lawyer that is involved in every single one of the  
10 criminal matters that involves Mr. Trump at this point in time.  
11 So he is the person that I was told needs to be at the  
12 deposition.

13                   And Mr. Brodsky was right. To a certain extent,  
14 Judge, it is water under the bridge because we agreed to move  
15 the date. They said that is fine. We will agree to it so long  
16 as you give us a date or if we agree at Mar-a-Lago, which we  
17 did, and if you agree to give us the security protocols in  
18 advance, which we said we would.

19                   And what transpired over the weekend is once we had  
20 this back and forth, they sent us a proposed order which listed  
21 out the deposition and the production. I agreed to -- I think  
22 I may have tweaked the start time of the deposition from 9:30  
23 to 10:00 and changed the complete production date from  
24 September 11th to -- I'm sorry -- from September 4th to  
25 September 11th. That's it.

1           It was their order and they said fine. And then, I  
2 get a different order from Mr. Brodsky that says no, no, no, I  
3 sent you the wrong order. So now the order that they then  
4 asked us to agree to again contemplates agreement of the  
5 deposition date on October 3rd, which we had no issue with.

6           We proposed it and they accepted it, but now they  
7 inserted language with regard to the Show Cause order. And I  
8 said if we are trying to reach agreement and avoid a hearing  
9 using up the Court's time on things that we have already agreed  
10 to because of the deposition, we all agreed this is the date.  
11 This is how it is going to play out.

12           I am hearing now from Mr. Brodsky that he wants to  
13 proceed tomorrow. And I think that that is just following up  
14 on something that the Court said this morning, but we were all  
15 past that. We had resolved that deposition issue and we were  
16 moving forward and that is the date.

17           As it related to the production, as I explained to  
18 Mr. Brodsky over the weekend, the way that the documents were  
19 produced to us was in a particular format that we were unable  
20 to transfer from access to documents to PDFs for purposes of  
21 being able to produce them and produce them in a searchable  
22 fashion.

23           So I explained that to Mr. Brodsky. My assistant is  
24 here and she was tasked with this responsibility all weekend to  
25 figure out. And unfortunately, couldn't get it done by Sunday,

1 but yesterday was able to figure it out and was on-line trying  
2 to figure out this platform to be able to transfer the  
3 documents. And we transmitted all of the documents with the  
4 exception of one document that I told Mr. Brodsky about that I  
5 am going to be sending to him as soon as I get back to my  
6 office.

7                   We provided the entirety of the production. They  
8 said, well, we are going forward with the hearing nevertheless.  
9 And I said on what? I would like to have some indication and  
10 their response was something akin to what I heard now, which is  
11 the insufficiency of the production.

12                   And I said, well, tell me specifically what it is  
13 because, Your Honor, when we were here before you, you limited  
14 some of the document requests in a very meaningful way. And  
15 you sustained a substantial amount of the objections in a  
16 meaningful way and did not address a huge chunk of it, which  
17 dealt with the financial production.

18                   And that is just the reality of where we are right  
19 now, but I am representing to the Court in communications that  
20 I have had with Alan Garten, who is the Chief Legal Officer or  
21 General Counsel for the Trump organization, that we have gone  
22 beyond. And not just going through Mr. Trump's personal files,  
23 but we've gone through the Trump organization to gather all of  
24 these documents.

25                   But the reality is Mr. Trump is not an e-mailer.

1 Mr. Cohen is not an e-mailer. The e-mails that I had from  
2 Mr. Cohen, or that had the word Cohen in it, was for a  
3 different Cohen that worked for Mr. Trump; David Cohen.

4 When I reviewed hundreds of e-mails none of which  
5 related to Michael Cohen. The handful of e-mails that I saw  
6 that related to Michael Cohen dealt with him communicating with  
7 somebody about a baseball camp apparently for one of the  
8 children, but unrelated to Mr. Trump.

9 There are no other documents with the exception of the  
10 one document that I am going to send to Mr. Brodsky today that  
11 is subject to production based upon these requests, Your  
12 Honor's objections, and that is the reality of it.

13 And the reason why I said that it is not so urgent is  
14 because of the fact that I was struggling to comply with the  
15 Court's order that I received late last week to get the  
16 documents to him on Sunday on a Labor Day weekend and to task  
17 my assistant with you need to drop whatever you are doing. I  
18 need to get this done. And she was, like, I can't. I can't  
19 physically get these documents in a way that are producable.

20 THE COURT: Now when was the production due from the  
21 last hearing?

22 MR. BRITO: Your Honor, I don't believe you set a date  
23 for production and this is just an observation. There is no  
24 order with respect to the specific rulings that you made on a  
25 category-by-category basis and so there was no deadline for

1 when to produce the documents.

2           It was just left between us to -- obviously we took  
3 copious notes. We knew what you said. We understood the  
4 ruling. We prepared an amended response that dealt with those  
5 categories that you asked us to acknowledge and either you  
6 produce them or you have no such documents.

7           THE COURT: And what about the privilege log, though?

8           MR. BRITO: There are, based upon the Court's rulings  
9 and the fact that Your Honor did not address some of the  
10 categories of documents in the document request at that time,  
11 there is no privilege log. There are no documents being  
12 withheld on the basis of privilege.

13           So I am just being transparent. We have given him the  
14 documents that are responsive. I have nothing else to produce.  
15 I have had very extensive conversations. We have run searches.

16           And as I mentioned, we ran something as broad as the  
17 word Cohen within a large organization and there is nothing  
18 else that relates to these categories of documents. That's all  
19 I can say.

20           As it relates to the deposition, I appreciate the fact  
21 that Your Honor is probably frustrated that we are even here  
22 having this conversation. My apologies to the Court that we  
23 are. I wish I could have been able to deal with the deposition  
24 issue sooner, but I didn't. I dealt with it as quickly as I  
25 could based on the information that was supplied to me by those

1 who have a lot more information than I do with regard to  
2 availability.

3 I will not be able to have Mr. Trump available for  
4 deposition tomorrow. Especially not in Mar-a-Lago. He is not  
5 even in Florida right now. I am, again, just underscoring the  
6 fact that we had an agreement. And I believe that that  
7 agreement ought to be honored as opposed to Mr. Brodsky now  
8 saying, oh, we are willing to go forward tomorrow.

9 We had an agreement. It is e-mailed between one  
10 another. If there is a proposed order that sets it out that we  
11 are prepared to have the Court sign so we can eliminate the  
12 need for this morning's hearing, but I simply won't be able to  
13 get Mr. Trump anywhere because of Secret Service issues,  
14 because of travel issues, and because of issues related to the  
15 criminal matter.

16 One of the reasons why last week was a bit uncertain  
17 for us is because the date tomorrow was the date that there was  
18 supposed to be an arraignment in the Georgia case. They ended  
19 up waiving that arraignment late last week and that was a  
20 roadblock that we needed to clear.

21 But that arraignment date was something that came on  
22 the radar after we had selected that deposition date. I didn't  
23 want to get into it because I had a feeling that that was going  
24 to happen, but I could not give Mr. Brodsky the go-ahead one  
25 way or the other until that issue was resolved.

1                   And in having that conversation, Mr. Blanche told me  
2 about his personal issue. And I respected that and I was  
3 hopeful that opposing counsel would respect that as well and  
4 they did.

5                   And so I am asking the Court to simply allow the  
6 parties to move forward with respect to what we agreed to as it  
7 relates to the production. Mr. Brodsky has a specific issue  
8 that he -- not just the number of pages that have been  
9 produced, but if there are specific categories that he believes  
10 are not being responded to, I will have that conversation with  
11 him.

12                  And if not, I am sure he obviously knows how to get it  
13 before the Court and tee up that issue, but I am representing  
14 to the Court based upon the communications with my client, I  
15 have nothing else to produce, with the exception of that one  
16 document, which I said I will be producing today.

17                  THE COURT: So based on your description, obviously  
18 you were not the person supervising the search, correct?

19                  MR. BRITO: I was not.

20                  THE COURT: And the person supervising the search was  
21 Mr. Garten?

22                  MR. BRITO: Correct.

23                  THE COURT: Okay.

24                  MR. BRITO: There is another gentleman that works with  
25 him. They work hand-in-hand, but Mr. Garten is the person who

1 I communicate with for purposes of --

2 THE COURT: And he is a lawyer?

3 MR. BRITO: He is. He is General Counsel or Chief  
4 Legal Officer. I am not sure of the specific title within the  
5 Trump organization, yes.

6 THE COURT: Okay. Well, on the deposition date, did  
7 you, in fact, agree to postpone and set it to October the 3rd?

8 MR. BRODSKY: Under duress because we had no choice.  
9 We weren't --

10 THE COURT: You could have enforced the notice. In  
11 other words, you could have said, no, we have to go forward.

12 MR. BRODSKY: Well, except that we were not going to  
13 be before the Court until Thursday.

14 We didn't know the Court was going to move the hearing  
15 until today, at which point we would have had the ability to  
16 enforce it. But we felt like we were put in a corner by virtue  
17 of the fact that --

18 THE COURT: The bottom line is did you agree to  
19 October 3rd or not?

20 MR. BRODSKY: We did.

21 THE COURT: Okay. So is that date workable on your  
22 end?

23 MR. BRODSKY: It is.

24 THE COURT: Okay. And do you want to do it at  
25 Mar-a-Lago?

1                   MR. BRODSKY: We prefer to do it in the courthouse.

2                   THE COURT: Okay. Because, obviously, that cannot be  
3 arranged in a couple of days. So to the extent that you did  
4 not have that set up well in advance, I guess there is no other  
5 -- well, you can obviously do it also at a videographer  
6 location, right?

7                   MR. BRODSKY: You know, the materials we submitted  
8 evidence and the back-bending efforts we undertook to do those  
9 logistics and --

10                  THE COURT: But, see, one of the concerns I had was,  
11 though, at the last hearing I thought when this came up you all  
12 kind of had already a game plan of the logistics. I thought  
13 that that was already kind of in play.

14                  MR. BRODSKY: Well, no.

15                  Immediately after that hearing we wrote Mr. Brito an  
16 e-mail and said do you want to do it in West Palm in the  
17 courthouse because we need to advise Judge Torres so he can  
18 assist us, or we can do it someplace else, but just tell us.  
19 And then, we repeated those e-mails pretty much every day for  
20 ten days with no response.

21                  So that is part of the challenge here is we just have  
22 not been getting cooperation from the Plaintiff in the  
23 logistical side of this and we are relatively agnostic about  
24 the location.

25                  We would prefer the courthouse, but are not going to

1 lie down on the railroad tracks, so to speak, if Mr. Trump  
2 insists to do it at Mar-a-Lago if we can get the logistics set  
3 up so we are able to appear and do it.

4                   So one additional request we would make, before I turn  
5 back to the documents issue, is that we get a court order  
6 requiring that Mr. Trump advise where he wants the deposition  
7 to happen. Either at Mar-a-Lago or the West Palm Beach  
8 Courthouse by some date certain and that they then give us  
9 logistical information a number of days in advance.

10                  Let's say two weeks in advance of the set deposition  
11 date so we have that squared away. We do not want to be  
12 scrambling and then rushing into the Court and saying, well, we  
13 don't even know who is going to let us in the front door.

14                  MR. BRITO: Your Honor --

15                  MR. BRODSKY: So that is the deposition issue.

16                  To the document point, you know, Mr. Brito does not  
17 know what searches were done because he did not supervise them.

18                  If Mr. Garten wants to submit a sworn declaration to  
19 the Court explaining exactly what he did and how he did it,  
20 then we can assess it, but Mr. Brito is in the dark just like  
21 we are because he is just relying on someone's say-so.

22                  So I would request, Judge, that by Friday Mr. Garten  
23 give a sworn declaration explaining in detail the search that  
24 he did. And if Mr. Brito in turn went through and had his own  
25 involvement that he submit a declaration as well explaining to

1 the Court and to us what he did so we can assess whether the  
2 search was done in a reasonable manner. We don't think it has  
3 been.

4 THE COURT: And what makes you think that?

5 In other words, I mean, we did have various arguments  
6 back and forth as to the scope of the production at the last  
7 hearing, right? And so given the rulings that we had what  
8 makes you think that you don't have -- first of all, you only  
9 had a day to review them.

10 MR. BRODSKY: It does not take very long to review  
11 346 pages of documents.

12 I would represent to the Court that out of the hundred  
13 unique pages, ten of those pages are taken up by Mr. Cohen's  
14 employment agreement. Another forty or fifty pages are taken  
15 up with his pay stubs. There are maybe ten pages of e-mails;  
16 maybe four or five e-mails that are in the entire production.

17 And I find it impossible to believe that of Mr.  
18 Trump's army of attorneys, advisers, and consultants all of  
19 whom he has control of, none of them e-mailed about Stormy  
20 Daniels. If they did some of those might be privileged, but  
21 this was a major scandal and a big multi-month news event.

22 I am certain, as the day is long, that there are  
23 e-mails amongst his team about this and they are very likely to  
24 lead to the discovery of admissible evidence here.

25 Particularly on the point of whether Mr. Trump, in

1 fact, had a relationship with Stormy Daniels and what Mr.  
2 Cohen's role is in buying her silence, which Mr. Trump has put  
3 squarely at issue. So this is a key issue in the case.

4 And you know, I represent wealthy people with lots of  
5 lawyers and a team of professionals. I know what happens when  
6 something of a scandal of this magnitude breaks that there is a  
7 lot of back and forth.

8 THE COURT: Remind me because, frankly, I do not  
9 remember. But remind me and give me an example of a category  
10 of document that I compelled, right, or I ruled on an  
11 objection, I guess I should say, that you feel is missed.

12 MR. BRODSKY: All documents, communications, and  
13 correspondence reflecting the existence of any personal  
14 relationship between Mr. Trump and Stephanie Clifford/Stormy  
15 Daniels.

16 THE COURT: And what did you get?

17 MR. BRODSKY: What's that?

18 THE COURT: What did you get on that category? What  
19 did you get?

20 MR. BRODSKY: Well, I am a little reluctant to  
21 disclose them because they may be deemed confidential and there  
22 is news media listening to this.

23 THE COURT: Well, categorically.

24 MR. BRODSKY: Categorically they are e-mails between  
25 Mr. Cohen and Miss Clifford's attorney about the nondisclosure

1 agreement.

2 THE COURT: Okay.

3 MR. BRODSKY: There were no other communications from  
4 anybody afterwards discussing the nondisclosure agreement when  
5 the scandal broke. There was not one e-mail in the Trump  
6 organization or amongst Mr. Trump's advisers about the  
7 nondisclosure agreement after it was front page news for  
8 multiple days.

9 I mean, that is absurd. There are e-mails for  
10 certain. Unless there is some *omerta* that transcends what the  
11 most sophisticated crime families in the world can do.

12 THE COURT: Well, most of them do not use e-mail, in  
13 fairness.

14 MR. BRODSKY: That is true, but Mr. Trump's lawyers  
15 and PR people, and surrogates, and individuals who go out and  
16 speak to the media on his behalf have e-mails.

17 I mean, they didn't do a coordinated effort to fight  
18 back the Stormy Daniels scandal by some elaborate game of  
19 telephone. It didn't happen that way.

20 THE COURT: Okay. All right. Did you want to add  
21 anything?

22 MR. BRITO: Just the specific response that we  
23 provided to that specific request.

24 Plaintiff is not in possession, custody, or control of  
25 responsive documents because there are no documents that Mr.

1 Trump has that would reflect the personal relationship between  
2 him and Miss Clifford. Including any communications and  
3 correspondence between Mr. Trump and Miss Clifford.

4 Mr. Brodsky is correct that we did produce other  
5 documents related to that issue involving Miss Clifford, but  
6 there are no other documents specific to the category that he  
7 outlined.

8 And again, if we were to go one-by-one, especially  
9 with regard to what Your Honor asked us to respond to, either  
10 overruling our objections and/or modifying certain requests,  
11 which Your Honor did, we produced everything.

12 With respect to the declaration for Mr. Garten, I have  
13 no issue with that. If they want that type of clarity, Mr.  
14 Garten is an attorney and he's got his ethical obligations and  
15 that is a nonissue.

16 As it relates to the deposition location, I did want  
17 to at least read to the Court from the order that we had agreed  
18 to, which says that:

19 "The Plaintiff's deposition shall occur October 3rd of  
20 2023 at the Mar-a-Lago Club in West Palm Beach, Florida.  
21 Plaintiff must provide all logistical details requested by  
22 counsel for Defendant. Including any security protocols and  
23 requirements by..."

24 They even put September 12th. I asked to have it  
25 September 19th.

1                 ". . . as this is a court ordered deposition, the  
2 location and date may not be changed unless otherwise agreed by  
3 the parties or upon leave of Court."

4                 So what they are asking the Court in terms of the  
5 order, we had agreed to the language of that on Sunday. And  
6 unfortunately, we are still dealing with this because I thought  
7 this was a done deal. The only thing I modified in that  
8 paragraph --

9                 THE COURT: It does not sound, though, on that issue  
10 like they are agreeing to do it at Mar-a-Lago, *per se*. The  
11 normal rule is that the person seeking the deposition sets the  
12 location so long as it complies with Rule 45.

13                 MR. BRITO: There are other e-mails, some of which I  
14 believe have been submitted to the Court, for purposes of this  
15 morning's hearing, where they said we will agree to conduct it  
16 at Mar-a-Lago.

17                 Not just in a proposed order, but in e-mail  
18 communications when this issue first came up because the Court  
19 -- I don't want to say reluctantly, but offered to potentially  
20 assist the parties in trying to have the West Palm Beach  
21 Courthouse be made available, or at least make an inquiry of  
22 the Chief Judge.

23                 THE COURT: Well, why wouldn't they just be better to  
24 put it -- there are tons of videographer locations that are big  
25 enough to accommodate anybody. Wouldn't that be a better

1 place?

2 MR. BRITO: Better?

3 THE COURT: Than in an office building.

4 MR. BRITO: I think better is a bit subjective in  
5 relation to the security issues that we are going to have to  
6 confront and potentially the media getting Mr. Trump in and out  
7 of that location.

8 As I have banged my, you know, proverbial hand on the  
9 table in this, I don't want a lot of media attention related to  
10 the events of this case. That has not been something that we  
11 have been a proponent of and I am trying to remain consistent  
12 in that respect.

13 So if Mar-a-Lago is fine, they have asked for a  
14 separate break-out room and whatever they need, we will  
15 accommodate that. I think the only issue was, as they have  
16 referenced in the order, we just need the security protocols to  
17 get in and out, which is a nonissue.

18 It is going to make the security aspect of what we are  
19 trying to do that much more simpler to be able to do it at  
20 Mar-a-Lago, as opposed to a courthouse or a videographer in an  
21 office building. I think that becomes a little less manageable  
22 and again --

23 THE COURT: But why, though? In other words, why?

24 MR. BRITO: So I think it is Secret Service above  
25 everything else.

1                   THE COURT: He goes to play golf every weekend.

2 Somehow that is manageable.

3                   MR. BRITO: It is manageable because they are out  
4 playing golf, but in a deposition setting it is a bit different  
5 in terms of a public building.

6                   THE COURT: But how so, though?

7                   In other words, the media is not allowed to roam a  
8 building, right? The media is not allowed to roam a courthouse  
9 any more than they are allowed to roam a private golf course.

10                  Nor are they allowed to just roam in around a private  
11 building. I mean, there are areas where the media would be  
12 allowed because it is a public location, right?

13                  MR. BRITO: Right.

14                  THE COURT: But that does not mean that a person with  
15 tons of security couldn't come in and out of. That part I just  
16 don't understand.

17                  MR. BRITO: It is not something that I deal with on a  
18 regular basis clearly, Your Honor, with regard to what the  
19 Secret Service protocols are with regard to these types of  
20 events.

21                  My order, if I could have an order of preference,  
22 would be at Mar-a-Lago because we have agreed to it and the  
23 Defendants are okay with that location, or a courthouse which  
24 is a far more secure location.

25                  And then if we were, you know, obligated, if you will,

1 or directed by this Court to do it in a court reporter and  
2 videographer office building of sorts, that would be my  
3 request, but I think I haven't heard any real objection as to  
4 why they don't want to do it in Mar-a-Lago.

5 They have asked for accommodations. We will provide  
6 them all the room, space, and privacy that they are looking  
7 for. And obviously, it is not going to be sitting outside in  
8 the sun. We are going to be doing it in a convenient place for  
9 everybody.

10 That is just a request that my client has made just  
11 for ease of getting people in and out and avoiding any of the  
12 extraneous issues that I do not want to have to get involved  
13 with and I am sure that the Secret Service does not want to  
14 have to get involved with.

15 It is far easier to run clear into the individuals on  
16 the Defendant's side who plan to attend the deposition because  
17 it is only a couple of people. That way we can just eliminate  
18 the issue.

19 And again, their language, their proposed order, I  
20 said absolutely fine. Just give me a little bit more time to  
21 clear all the protocols, but other than that, that is fine and  
22 they agreed to that.

23 THE COURT: I guess on the document issue, I mean, I  
24 guess ordinarily, of course, I would rely on the representation  
25 of the lawyer, but you are candidly telling me that you did not

1 manage the review.

2 So, like, I guess I need to get the declaration of  
3 both Mr. Garten and the client and take that as the first step,  
4 right? In other words --

5 MR. BRODSKY: Yes. And so I think we would ask,  
6 Judge, again, have Mr. Garten swear under oath what custodians  
7 were searched. What timeframe. What search terms. Who  
8 reviewed the documents after they were initially pulled from  
9 the search and what criteria were used to separate out the  
10 responsive from the nonresponsive documents. That will be a  
11 starting point.

12 My suspicion is that it is going to be deficient  
13 because there will be people that have not been -- whose boxes  
14 have not been searched. That is why we need to know that so  
15 that we can say, well, you have not gone to John, and Sue, and  
16 Michael, or whoever.

17 THE COURT: All right. That way we can take that as a  
18 starting point, I suppose.

19 MR. BRITO: And Your Honor --

20 THE COURT: All right. So you need to decide, then,  
21 are you comfortable with it at Mar-a-Lago or not? Because we  
22 need to put it in the order and if it is going to be --

23 MR. BRITO: Our preference would be the courthouse.

24 THE COURT: The one thought I had, though, now that I  
25 think about it, the downside of the courthouse is it is a

1 public building.

2                   So I did not appreciate this when I first suggested  
3 it, in fairness. But since it is a public building, as opposed  
4 to a private building, right? Since it is a private building,  
5 do I have to be careful in terms of restrictions that I place  
6 on access by the media.

7                   Frankly, I do not know off the top of my head. So  
8 that I raise as something that we would have to think about  
9 which, frankly, it did not occur to me. I was not thinking  
10 along those lines, but I think it is a fair consideration. So  
11 that is the first thing.

12                   The second thing is obviously the Plaintiff's proposal  
13 is if we do it at Mar-a-Lago it solves that problem because it  
14 is a private building. The alternative to that is a different  
15 private building, right? So to some extent, I kind of need you  
16 to work it out one way or the other this week.

17                   MR. BRITO: Yes. I don't --

18                   THE COURT: Give yourself a week. In the meantime, I  
19 can find out, realistically, if the courthouse is actually a  
20 good idea or not given my --

21                   MR. BRODSKY: I guess I would say, Your Honor, I  
22 prefer that the Court order the location today.

23                   THE COURT: Well, that's what I intend -- well, I  
24 cannot today because you don't have a date. You don't have a  
25 firm proposal.

1 MR. BRODSKY: Well, so I would --

2 THE COURT: I want you to go back and think about it.

3 MR. BRODSKY: Okay.

4 THE COURT: So that way in a week -- what is today,  
5 the 5th?

6 THE COURTROOM DEPUTY: Yes.

7 THE COURT: So by the 12th I will enter the order that  
8 sets the time and the place for October 3rd. At least we have  
9 a date. Everybody seems to be in agreement with the date come  
10 hell or high water. So have backup plans accordingly.

11 And then, the location, either agree upon or just give  
12 me a proposal. I think I understand their proposal. Their  
13 proposal is more understood. If you have an alternative  
14 proposal and you do not have an agreement, give it to me and I  
15 will decide.

16 And then, in the meantime, that causes me to then  
17 potentially inquire realistically is it viable for us to do  
18 that. I may have been speaking out of turn, but that is fine.  
19 I can figure that out.

20 MR. BRODSKY: Okay. So I guess, then, Your Honor --

21 THE COURT: Because if you are not uncomfortable --  
22 let's put it this way. I have only taken two depositions at  
23 people's own places, but they were very sick people, right?

24 I was not going to force very sick Plaintiffs suing my  
25 client to go to my office. So there were medical issues there.

1 So I traveled to that location. Other than that, I always  
2 either did it at my office or at a neutral location.

3 So that would be the norm. So, in this case, this is  
4 an unusual case in fairness. Maybe not like that, but if you  
5 decide that you are fine with their proposal, then that is fine  
6 with me.

7 To some extent we need to think about that now. They  
8 have given you a proposal and you think it through and, then,  
9 we will finalize it on the 12th; by the 12th, okay?

10 MR. BRODSKY: Okay.

11 THE COURT: One thing I will order now is we will get  
12 by a week, by the 12th, the declaration of the in-house counsel  
13 who reviewed the production and the client certifying that  
14 there are no other documents, right?

15 MR. BRODSKY: Okay.

16 THE COURT: Because I can then bind the Plaintiff.

17 And then you may have information from which to then  
18 go to Mr. Brito and say, hey, see what I mean? They didn't go  
19 to this person. Whatever that is, but then we can get that  
20 issue off the table.

21 In fairness, it is not necessarily surprising to me  
22 that a lot of this communication was not put in e-mail or on  
23 paper given the nature of what you are talking about, but I  
24 leave open the room for possibility that you are right and I am  
25 wrong. Fair enough?

1 MR. BRITO: Fair.

2 THE COURT: And then, obviously you can develop, like  
3 in any other case, you can develop a record from which to make  
4 arguments from.

5 He has already represented on the privilege log -- I  
6 would have ordered that by today, but he is representing that  
7 based on their review there is no privilege log. So we will  
8 take that at face value for now. Okay.

9 MR. BRODSKY: Okay.

10 THE COURT: And then, so you will get that on the  
11 12th. That gives them a week to prepare it and make sure it is  
12 right. And then, by the 12th, you will give me either your  
13 proposal for an alternative location or an agreed protocol at  
14 Mar-a-Lago. In which case, I will incorporate it and put it on  
15 the order by the 12th. So that way the 3rd is set in stone no  
16 matter what. Fair?

17 MR. BRODSKY: Thank you.

18 THE COURT: And then what was the third thing?

19 MR. BRITO: They wanted to have our privilege waived,  
20 but I think that there is no --

21 THE COURT: At this point, yes, it is premature for me  
22 to do anything like that.

23 MR. BRITO: And the other thing is they wanted to  
24 overrule our objections, but that is not really at issue. Your  
25 Honor already addressed the objections and to produce the

1 documents.

2 THE COURT: I never entered an order, but nobody ever  
3 asked for one, right?

4 MR. BRODSKY: In the event we would want the Court to  
5 do that we will circle back with a motion for --

6 THE COURT: I think I -- yes, motion for entry of  
7 order.

8 MR. BRODSKY: Correct.

9 THE COURT: That's fine.

10 MR. BRODSKY: Okay.

11 THE COURT: Okay. So we will do that. At least we  
12 can make progress there.

13 Anything else in my last 15 minutes?

14 MR. BRODSKY: I believe that is it for the Defendant,  
15 Your Honor.

16 THE COURT: For the Plaintiff?

17 MR. BRITO: Nothing further. Thank you for your time.

18 THE COURT: Okay. All right. So we have made that  
19 progress and I will look out for what you submit by the 12th  
20 and I will enter it. And then that way October 3rd will be set  
21 and then we will see where we are.

22 MR. BRITO: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. BRODSKY: Thank you, Your Honor.

25 (Thereupon, the proceedings concluded.)

## CERTIFICATE

4 I hereby certify that the foregoing transcript is an  
5 accurate transcript of the audiotape recorded proceedings in  
6 the above-entitled matter.

09/06/23